

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish A Framework for Network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003
(Filed April 7, 1993)

Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002
(Filed April 7, 1993)

(Verizon UNE Phase)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING SUSPENSION OF EFFECTIVE DATE OF NONRECURRING
CHARGES ADOPTED IN DECISION 03-03-033**

In accordance with Ordering Paragraph 7 of Decision (D.) 03-03-033, Verizon California (Verizon) requested a ruling suspending the effective date for the nonrecurring charges¹ adopted in that order. This ruling denies that suspension request.

In D.03-03-033, the Commission ordered Verizon to make several changes to its nonrecurring charges, including:

- Charging separate rates for mechanized, semi-mechanized and manual orders

¹ "Nonrecurring charges" refers to the initial fees that competitive local carriers pay Verizon to order and provision unbundled network elements (UNEs).

- Separating charges for initial, additional orders and record orders
- Eliminating collection of disconnection charges at the time of initial orders; and
- Incorporating a markup of 22%.²

The decision ordered Verizon to file updated nonrecurring charges complying with these changes and further ordered that the revised nonrecurring charges would go into effect on the 75th day after the effective date of D.03-03-033, unless the effective date was suspended by Administrative Law Judge (ALJ) ruling because of issues raised by Verizon's compliance filing.³

In compliance with D.03-03-033, Verizon filed a revised list of its nonrecurring charges on April 2, 2003, and later amended this list on May 12, 2003 based on comments filed by AT&T Communications of California (AT&T). Also on May 12, 2003, Verizon filed a petition to modify D.03-03-033 and suspend the effective date of the nonrecurring charges adopted in that order until March 1, 2004. Verizon contends that D.03-03-033 requires fundamental changes to its ordering and billing systems that cannot be accomplished in the 75 days allowed in the order. Comments on Verizon's petition are due on June 11, 2003.

There is no dispute over the calculation of the nonrecurring charges that Verizon filed in its compliance filing and that are set to go into effect on May 27, 2003. In D.03-03-033, the Commission provided for a suspension in the

² See D.03-03-033, Ordering Paragraph 6.

³ D.03-03-033 was effective on March 13, 2003, which makes the 75th day on which nonrecurring charges are effective May 27, 2003.

event of “issues raised by Verizon’s compliance filing,”⁴ but in fact, there are no issues raised by the compliance filing. The only issue is raised by Verizon in its petition to modify, and relates to Verizon’s ability to restructure its ordering and billing system to accommodate the new nonrecurring rate structure. The Commission can consider this issue when it acts on Verizon’s petition to modify the nonrecurring charge effective date.

In the meantime, and until the Commission decides that a change in the effective date is warranted, the rates adopted by the Commission in D.03-03-033 should take effect. It would be unreasonable to force competitive local carriers (CLCs) who order UNEs to pay nonrecurring charges at the old rates simply because Verizon cannot meet the 75 day deadline to get its billing system in order. Moreover, a suspension of the nonrecurring charge effective date gives Verizon little incentive to expedite ordering and billing system changes to implement the new lower rates. If Verizon cannot bill carriers according to the new nonrecurring rates, it should defer billing for these services until it can do so at the new rates, or until the Commission acts on its petition to modify. Carriers who order UNEs from May 27, 2003 until the Commission acts on Verizon’s petition to modify are not obligated to pay anything more than the rates adopted by the Commission in D.03-03-033, as set forth in Verizon’s compliance filing of May 12, 2003. Assuming Verizon cannot implement its billing changes in a timely manner, the most reasonable outcome until the Commission acts on Verizon’s petition to modify is for Verizon to defer billing for its nonrecurring charges.

⁴ D.03-03-033, *mimeo* at p. 63.

In a conference call to discuss Verizon's suspension request,⁵ Verizon voiced concern that because its billing system has not been restructured to accommodate the changes ordered in D.03-03-033, it will be unable to track the types of orders it receives in order to bill carriers at a later date. Verizon has previously stated that it uses a single order processing interface that receives orders from three different electronic sources. Verizon states that because all order are received electronically, it cannot distinguish whether CLC UNE orders are "mechanized, semi-mechanized, or manual" as required by the Commission. (See Verizon Response in Interim Pricing Phase, 9/20/02, p. 17.) It is unreasonable to believe that Verizon does not have some method of knowing the origin of the CLC orders that ultimately make their way into its order processing system. Verizon should endeavor to track this in some fashion so it can bill its nonrecurring charges at a later date. If Verizon cannot distinguish the origin of orders in its electronic system, then it would appear all orders are received electronically and should be considered "mechanized."

Finally, I see three issues that may need to be addressed when the Commission acts on Verizon's request to modify the nonrecurring charge effective date. If the Commission ultimately grants Verizon's extension request and leaves nonrecurring charges at the current higher level, subject to true-up, CLCs will essentially overpay for services that the Commission has found should be rendered at a lower rate. Parties should comment on whether CLCs should receive interest from Verizon for overpayments once the rates are adjusted to

⁵ The assigned ALJ held a conference call with all parties on May 21, 2003 to hear their views on Verizon's suspension request before the May 27 deadline.

their proper level. Conversely, if the Commission denies Verizon's extension request, Verizon may not be able to bill at the new lower rates until a future date, which means CLCs will receive services now but pay later. Parties should comment on whether CLCs should pay interest to Verizon under this "deferred billing" scenario. Lastly, parties should comment generally on whether the Commission should consider some incentive method to speed up Verizon's compliance with D.03-03-033 such as penalties for further delays, or deferring payment for nonrecurring charges until Verizon's ordering and billing system changes are implemented. A deferred rate, subject to true-up, would potentially provide an incentive to Verizon to implement the new nonrecurring charges and might minimize any true-up owed by Verizon back to competitive local carriers.

Therefore, **IT IS RULED** that:

1. Verizon's request to suspend the effective date of the nonrecurring charges ordered in Decision (D.) 03-03-033 is denied until the Commission acts on Verizon's May 12, 2003 petition on the nonrecurring charge issue.
2. If Verizon cannot bill nonrecurring charges at the effective rate, it should defer billing until it can render a correct bill.
3. In comments on Verizon's petition to modify D.03-03-033 on the nonrecurring charge issue, parties should comment on:
 - a. Whether, if Verizon's petition is granted, CLCs should receive interest from Verizon for any nonrecurring charge overpayments once the rates are adjusted to their proper level.
 - b. Whether, if the Commission denies Verizon's extension request, CLCs should pay interest to Verizon if nonrecurring charges are deferred.

- c. Incentives to expedite Verizon's billing system changes, such as deferring payment of nonrecurring charges as described in this ruling.

Dated May 27, 2003, at San Francisco, California.

/s/ DOROTHY J. DUDA

Dorothy J. Duda
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Suspension of Effective Date of Nonrecurring Charges Adopted In Decision 03-03-033 on all parties of record in this proceeding or their attorneys of record.

Dated May 27, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

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